



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Public Access to the Mokelumne River

**MEETING DATE:** August 21, 1991

**PREPARED BY:** City Attorney

**RECOMMENDEO ACTION:** Report as requested by Council on August 7, 1991.

**BACKGROUND INFORMATION:** Questions have recently arisen concerning the availability of public access to the Mokelumne River within the City of Lodi and the City's obligation to afford such access.

Research reveals the following:

Government Code Section 66478.4, effective in 1975, states:

"(a) No local agency shall approve either a tentative or final map of any proposed subdivision to be fronted upon a public waterway, river or stream which does not provide, or have available, reasonable public access by fee or easement from a public highway to that portion of the bank of the river or stream bordering or lying within the proposed subdivision."

This law modified previous statutes on access. Prior to that, public access to waterways was not required. Riparian owners (those who **owned** the land adjacent to the waterways) **had** complete control of access in most cases.

Some development along the Mokelumne predates Government Code Section 66473, such as the Willow Glen project. As such, no public access was required for approval. However, the Lodi Lake Park "Wilderness Area" is adjacent so there actually is access abutting the development.

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



Only **two** other major subdivisions along the river have been built since Government Code Section 66478 became law; Rivergate, in 1976 and Mokelumne Village beginning in 1975. Public access to the river was originally dedicated through the Rivergate development, but after a time, it was believed that the public **was** not using the access, and so the easement was relinquished in 1980 at the request of the owners.

For reasons not entirely clear to me, no access dedication **was** required of the Mokelumne Village project. Although I have *not* seen all documentation concerning relevant maps and approvals, I suspect it *may* have been that access by way of the **City's** Scenic Overlook site was viewed as adequate since it was immediately adjacent to the Mokelumne Village project. Relevant to such situations, Government Code Section 66478.8 states:

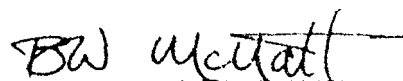
"Nothing in Section 66478.1 through 66478.10 of this article shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required ... is not provided ..., if the local agency makes a finding that such reasonable public access is otherwise available within a reasonable distance from the subdivision."

Presently, there is public access to the river at Lodi Lake Park although regulations may restrict the type of uses allowable. There is no publicly owned access available on the east side of town. Although the City still has the Scenic Overlook, it **is** fenced as a precaution because soluble lead has been found in the soil there. I hasten to **add** that there is a monitoring well on site which **shows** that the **lead is** not migrating toward the river, but it still may not be prudent to allow public access through this parcel at present.

The only remaining piece of undeveloped land on the south bank of the river within the city limits is the site of the former Community Winery (United Vintners). It **is** assumed that when and if this is proposed for subdivision, public access under Government Code Section 66478.4 will be required.

Any other public access point desired by the City at present would probably have to be acquired by purchase or condemnation.

**FUNDING:** Not applicable.

  
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Bob McNatt  
City Attorney

BM/vc

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